

In the Preliminary Hearing Order dated March 15, 1994, the Administrative Law Judge granted the claimant's request for temporary total disability benefits, medical treatment payment, and ordered the respondent to furnish the names of three physicians for claimant's further medical treatment.

The respondent appeals from this Preliminary Hearing Order raising the following issues:

- (1) Whether claimant's accidental injury arose out of and in the course of his employment with the respondent.
- (2) Whether timely notice was given.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for purposes of preliminary hearing, the Appeals Board finds as follows:

Pursuant to K.S.A. 44-534a(a)(2), the Appeals Board has jurisdiction to review this Preliminary Hearing Order as both of the foregoing issues raised by the respondent are issues enumerated therein as subject to review.

In the instant case, the claimant on his alleged date of injury, November 3, 1993, had been employed by the respondent as a "setter laborer" since August of 1993. Prior to this work related incident, claimant was involved in an automobile accident on October 23, 1993. As a result of the automobile accident, he received initial medical treatment that day at the Riverside Hospital Emergency Room in Wichita, Kansas, for multiple contusions and musculoskeletal strain. Additional medical treatment was provided by Richard Piazza, D.O., with the Park West Clinic in Wichita, Kansas. The claimant first saw Dr. Piazza on October 26, 1993, who diagnosed the claimant with post-concussion syndrome, post-concussion cephalgia, multiple contusions and abrasions due to the automobile accident. Dr. Piazza released the claimant to return to work for the respondent without restrictions on November 1, 1993.

The claimant returned to work without any residual effects from the automobile accident. He established through his testimony that when he returned to work he did not have pain and felt like he could perform his work duties. However, on November 3, 1993, the claimant testified that he had a sudden onset of pain in his shoulders, back and neck related to lifting chunks of concrete up into a bed of a dump truck. The claimant asserts that after this incident his symptomatology was different compared to the symptoms that he had after his automobile accident. Notification of the accident was given to Robert Cook, the owner of the construction company, and to Richard Cook, the owner's brother. Both of these individuals were working with the claimant on the same project on the date of the accident.

Claimant presented himself to the Park West Clinic on November 3, 1993, for medical treatment from Dr. Piazza with new complaints in the left shoulder, neck and left arm. Dr. Piazza returned the claimant to his regular work with a prescription for pain medication and told the claimant to return if he does not improve. On the date of the preliminary hearing, March 15, 1994, the claimant was continuing under the treatment of Dr. Piazza, having last seen him on February 22, 1994. During this visit, Dr. Piazza noted that claimant's condition continued to deteriorate and neurological evaluation, nerve conduction velocity test, and an EMG was requested.

The respondent did not provide medical treatment for the claimant after his work connected injury, so he continued to return for medical treatment to Dr. Piazza, who was his treating physician for his injuries received in the automobile accident. During the

December 2, 1993, visit to Dr. Piazza, claimant finally related that he was laid off work on November 14, 1993, because of his medical condition. He further described to Dr. Piazza the heavy work he was performing while working for the respondent which worsened his condition. It is Dr. Piazza's opinion that the claimant's current complaints of cervical, thoracic and left arm paresthesia were not diagnosed until after the automobile accident and are a direct result of claimant's heavy lifting at work. In Dr. Piazza's letter dated March 3, 1994, entered as an exhibit at the preliminary hearing, he makes the distinction between the claimant's work related injuries and the automobile accident as follows:

"...As far as his relationship to the motor vehicle accident of 10/23/93 and his lifting injury 11/3/93 at this time I find no correlation between the two. His motor vehicle accident caused post concussion syndrome, cephalgia and some minor abrasions and contusions and his evaluation was unremarkable for any acute obvious deformities that would have caused the symptoms that he presented with on 11/3/93."

The respondent's position in regard to this case is that the claimant's current injuries and complaints are the same as he suffered after the automobile accident of October 23, 1993. Accordingly, he has not sustained any new injuries while employed by the respondent. Considering the whole record, the Appeals Board disagrees and finds that the claimant, through his testimony and the uncontradicted medical reports of the treating physician, Dr. Piazza, has established that he met with a work related accidental injury while employed by the respondent on November 3, 1993.

The next issue that the respondent raises is notice of the accident required by K.S.A. 44-520.

Claimant testifies that he told Robert Cook, owner of the construction company, of his accident close to quitting time on November 3, 1993. He further testified that he again notified Mr. Cook that he was hurting when he was moving concrete on a cold day about one week after his accident. Robert Cook fired the claimant on November 14, 1993, and testified that he had no knowledge of claimant claiming a work related injury until the claimant's attorney notified him after he fired the claimant.

For preliminary hearing purposes, the Appeals Board finds the claimant's testimony is credible in reference to the issue of notice. Consequently, the Appeals Board finds, after considering the whole record, the claimant notified the respondent that he suffered an accidental injury while performing his work duties for the respondent within ten days from the date of his accidental injury as required by K.S.A. 44-520.

AWARD

WHEREFORE, it is the finding, decision and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge John D. Clark, dated March 15, 1994, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of July, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: Randy S. Stalcup, 2831 E Central, Wichita, Kansas 67214
Jerry M. Ward, PO Drawer 2005, Great Bend, Kansas 67530
John D. Clark, Administrative Law Judge
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